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E. ROBERT SEAVER, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1969

NUMBER 1554

JOHNNY B. DAPPER

vs.

CALIFORNIA

PETITION FOR A REHEARING OF

DAPPER vs. THE MUNICIPAL COURT

OF THE SAN DIEGO JUDICIAL DISTRICT

OF SAN DIEGO COUNTY IN CALIFORNIA

Johnny B. Dapper
In propria persona
335 N 34 Street
San Diego, California
Zip Code 92102

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Johnny B. Dapper, in propria persona, the petitioner herein prays for this Court to set aside this Court's Order of June 22,1970, denying him the Writ of Certiorari.

On September 5, 1968 he filed notice of Appeal from the Order of Superior Court of California, for San Diego County, denying him a Writ of Prohibition to restrain the Municipal Court, San Diego Judicial District.From further proceedings in a second criminal complaint, for the same original crime, as the first complaint, M 43578, (875 October Term 1969).

Appeal was taken to the Court of Appeal of the State of California, Fourth District Division One Which Court on October 17,1969,Affirmed said Order.

On May 11, 1970 petitioner filed in this Court a petition seeking a Writ of Certiorari to review the Opinion of the California Court of Appeal. On June 22, 1970 this Court denied such Petition. And this Petition seeks a Rehearing, and or relief from this Court's Order denying such Petition.

GROUNDS NOT PREVIOUSLY PRESENTED

On September 25, 1969 petitioner was seized in complete surprise,by the devise of an illegally issued bench warrant, and held in custody for almost five months. Just prior to this, on September 17,69

he made application for an extension of time to file Petition for Writ of Certiorari.Extension to November 22, 1969 was granted by Mr. Justice Marshall. Notice of this Order was not received by petitioner until October 26,1969, because of being in custody. He did however manage to prepare Petition while in custody and have it docketed November 22, 1969, as number 875 October Term 1969.Which Petition is directly related to this instant Petition. And petitioner's seizure and custody is also directly related,(please see petition for Writ of Habeas Corpus filed on December 10, 1969 in U. S. District Court Southern District of California), a copy of this petition is on file with case No. 875 October Term 1969. All during time preceding being taken into custody, petitioner was kept busy with local Court action, so was unable to have studied procedure in this Court. While in custody he requested visits to law Library but was denied by Presiding Judge of Superior Court, although the Officers at the Honor Camp were very willing to bring him to the law Library. So his first Petition was prepared with only a Rule book this Court's Clerk had sent him just two weeks before Petition was due.

A Petition for a Rehearing (No.875) Which has not yet been filed, (arrived one day out of time) and the original Petition in this instant case No. 1554, were both prepared shortly after petitioner was released from custody, before he had time to study at law Library. And now he is preparing this Petition, with very little improvement of circumstances, because of the state of affairs and problems, and turmoil, because of having been seized without warning and held in custody nearly five months. Now surely this Court can see that petitioner has been prevented from studying the way he had before filing any action in the Courts below, because of the abuse of Judicial power by the Municipal Court. His Petitions to this Court have been prepared in an extemporaneous manner, to be timely.

Since filing the original Petition in this case petitioner has learned that, his correct move would have been to take Appeal to this Court rather than to seek a Writ of Certiorari.

From the foregoing, surely this Court will see some of the problems confronting a poor man seeking Justice in this Court. Could he afford an Attorney of his choice these problems would not have effected the quality of Petitions. So if any credence is placed in the part of the oath " and to do equal right to the poor and to the rich," petitioner prays the Court will take these circumstances in to consideration.

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SAME JUDGE ISSUED ORDER APPEALED FROM

- MEMBER OF APPELLATE COURT -

The California Appellate Court which held the Opinion, petitioner seeks this Court to review had as a Pro tempore Justice of the Court, during period petitioner's case was in said Court's jurisdiction, the same Judge who as Judge of Superior Court made the Order denying the Writ of Prohibition to petitioner. Which Order said Appellate Court has affirmed. This Judge is now an Associate Justice of said Appellate Court.

Petitioner has the greatest respect for this former Judge of the Superior Court, because in fact he is one of petitioner's favorite Judges, as he did treat petitioner with respect. And though he did deny the Writ of Prohibition, he did issue stay orders to prevent the lower Court in proceeding until the matter had been determined in the Appellate Court. Petitioner also believes said Judge now a Justice took no part in writing the Opinion.

However petitioner does believe, human nature being as it is, that the Appellate Court would try harder to affirm an Order of one of their own than they would try to favor petitioner. He feels that in the spirit of fairness the matter should have transfered to another Division of the Court. Then he believes the Opinion would not contain statements which have the color of slander and others which are simply untrue.

For example; . ."maintaining his real property in an unkempt manner by allowing debris, rubbish and weeds to accumulate." UNTRUE. " The violations charged again were based upon Dapper allowing debris, trash, weeds and rubbish to accumulate" UNTRUE "He argues the same trash was on his property when the first complaint was filed as was there when the second complaint was filed." UNTRUE.

Why does the Appellate Court endeavor to give the impression to anyone reading the Opinion that petitioner's property contains only trash, debris, weeds and rubbish. Please see complaint M 43578 as page 6 Clerk's transcript Superior Court, it is no ways near as vehement.

Much is made of "criminal nuisance", petitioner was never charged with or convicted of a criminal nuisance. This has been injected into the case by the Opinion of the Appellate Court.

Petitioner has never refused to act, as charged in the Opinion. In fact he agreed to have everything in proper order if allowed ample time. He was put into these circumstances when forced to move from former rented location by freeway construction.

INTERVENING CIRCUMSTANCES

Since filing original Petition for Certiorari petitioner has noted in the Supreme Court Bulletin the following cases concerning double jeopardy, which have considerable bearing on his case.

Waller v. Florida No. 24 October Term 1969
Ashe v. Swenson No. 57 October Term 1969
Both decided on April 6, 1970

Both cases have elements that fit petitioner's case. In the Waller case, Florida had a statute like California Penal Code Section 373a allowing successive prosecutions. Petitioner had asked for a Constitutional Opinion on this from the Appellate. But the Court just quoted it as authority to permit a second trial. Both of the above cases cite many other cases and references, petitioner believes it needless to list them as this Court already has them and more.

Petitioner has noted in case cited by the California Appellate in the Opinion of his case, State v. Murray 237 Mo. 140 S. W. 899 If punishment is invoked that pays for the crime. Simular to a robber serving time for stealing, and the money not recovered, he does not have to reimburse the loss of money.

The way the California Penal Code 373a reads one could spend the rest of his life in custody for the same original crime. Please see In Re Snow 120 U. S. at page 282.

CONCLUSION

For the foregoing reasons, and those stated in original Petition for a Writ of Certiorari, it is respectfully requested that this Court now grant a Petition for a Writ of Certiorari or that the Court now treat this case as an Appeal as it should have been filed, had petitioner known the proper procedure.

Respectfully Submitted

I Johnny B. Dapper the petitioner have made and read this petition. The foregoing is true of my own knowledge except as to those matters stated herein on my information and belief, and as to those matters I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

July 14, 1970
San Diego, California

Johnny B. Dapper

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